



**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1979

No. 79-754

JOHNNIE A. JONES

Petitioner

versus

LOUISIANA STATE BAR ASSOCIATION

Respondent

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA**

Attorney for Petitioner:

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No. _____

JOHNNIE A. JONES

Petitioner

versus

LOUISIANA STATE BAR ASSOCIATION

Respondent

FILED:

CLERK

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA**

The petitioner, JOHNNIE A. JONES, prays that a writ of certiorari issue to review the opinion and judgment of the Supreme Court of Louisiana rendered in these proceedings on June 25, 1979,

OPINION BELOW

A copy of the opinion of the Supreme Court of Louisiana is hereto attached as Appendix "A", and made a part hereof as if herein set forth at length.

JURISDICTION

The judgment of the Supreme Court of the State of Louisiana was rendered on June 25, 1979, and petitioner's

[A]pplication for [R]ehearing was denied on July 27, 1979. The Supreme Court of Louisiana stayed its mandate for ninety (90) days from July 27, 1979, pending the filing of this petition for writ of certiorari and final disposition thereof by this Court.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

The Louisiana State Bar Association, appearing through the Committee on Professional Responsibility, brings this action against petitioner, Johnnie A. Jones, a practicing attorney, seeking his suspension from the practice of law for professional misconduct falling under Canon 9 of the Code of Professional Responsibility which charges an attorney with the responsibility of maintaining his client's funds separate from his own in an identifiable bank account and to promptly pay or deliver to the client as requested by the client all the funds the client is entitled to receive. Under Disciplinary Rule 9-102 the following guidelines for handling the funds of clients are provided:

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn

when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the Possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

1. Whether the [J]udgment rendered by the Supreme Court of Louisiana pursuant to its Original Jurisdiction under the provisions of Louisiana Constitution (1974) Article V, Section 5(B), is contrary to the law and evidence and prejudicial to petitioner in that it denies petitioner equal protection of the laws as guaranteed to him by the Fourteenth Amendment of the Constitution of the United States of America and Article I, Section 3, of the Constitution of the State of Louisiana insofar as said [J]udgment holds and maintains that the Articles of Incorporation of the Louisiana State Bar Association, Article XVI (Code of Professional Responsibility), Cannon 9 (Ethical Considerations), or Disciplinary Rules (DR) 9-102, all of LSA Volume 21A, Chapter 4—Appendix, Title 37 (immediately following LSA-R.S. 37:218) is

a prohibition against petitioner, as an attorney, having commingled his client's fund with his client's knowledge and consent, at the request of his client and for the benefit of his client [i.e., in holding and maintaining that the provisions of DR 9-102 presuppose a trust reposed in petitioner, as an attorney, which gravitates so strongly in favor of the public interest and good moral conduct that such provisions cannot [could not] be waived or altered with the knowledge and consent of client and at the request of the client and for the benefit of client?

2. Whether the said Judgment of the Supreme Court of Louisiana is contrary to the law and evidence and denies petitioner equal protection of the laws as accorded him by the Fourteenth Amendment to the Constitution of the United States of America and Article I, Section 3, of the Constitution of the State of Louisiana insofar as it fails to take judicial cognizance of that portion of the testimony of the complaining witness, William Adams, who testified on May 23, 1977, at page 15, line 24 through page 16 line 2 of the [T]ranscript of the Formal Investigatory Hearing by Louisiana State Bar Association Committee on Professional Responsibility, as follows:

A. That's how much he had held for me, because he asked me, to be correct, could I let him have \$2,000; and I agreed to it,...

which, in essence, acknowledges receipt of payment in full settlement of the first [D]raft in the amount of \$10,198.70 under the attorney-client relationship which existed between petitioner and the said complaining witness and created and established nothing more than a personal loan by the complaining witness to the petitioner that is not within the ambit of Article XV [Discipline and Disbarment of Members] of the Articles of Incorporation of the Louisiana State Bar Associ-

ation, or DR 9-102, except same be unconstitutional inasmuch as it denies petitioner due process of law and equal protection of the laws accorded to him by the Fourteenth Amendment to the Constitution of the United States of America and Article I, Sections 2 and 3, of the Constitution of the State of Louisiana in that by virtue of petitioner being an attorney he is restrained by the "Disciplinary Rules" of the Bar Association from engaging in private business matters [common in the course of events] with a client such as that indicative of the aforerecited testimony of the complaining witness, William Adams, except to unfavorably subject himself to the "Disciplinary Rules" of the Bar Association and be disciplined for commingling of client's funds, as in the case made and provided, or be disciplined for, purportedly, having given the appearance of impropriety?

3. Whether the provisions of DR 9-102 [insofar as it prohibit petitioner, merely by virtue of petitioner being an attorney pursuing a livelihood as a licensed practicing attorney, from engaging in extemporaneous negotiations with his client, William Adams, the complaining witness, during the existence of an attorney-client relationship, or immediately subsequent thereto] is an unconstitutional discrimination that infringes upon petitioner's constitutionally protected freedom of association accorded to him [petitioner] by the First Amendment of the Constitution of the United States of America and Article I, Section 9, [peaceful assemblage] of the Constitution of the State of Louisiana?

4. Whether Article XV, Sections 3 and 4, of the Articles of Incorporation of the Louisiana State Bar Association is unconstitutional insofar as there is provided no "Liberative Prescription" by which time civil-judicial prosecution shall commence from the date of the act of commission of any alleged-ostensible breach of the "Disciplinary Rules" and, therefore, under said provisions, petitioner has been and is

denied due process of the law and qual protection of the laws as accorded him by the Fourteenth Amendment to the Constitution of the United States of America and Article I, Sections 2 and 3, of the Constitution of the State of Louisiana?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment I:

... or the right of the people peaceably to assemble, ...

Constitution of the United States, Amendment XIV, § 1:

... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Louisiana, Article I, §§ 2 and 3:

No person shall be deprived of life, liberty or property, except by due process of law... No person shall be denied the equal protection of the laws.

Constitution of the State of Louisiana, Article V, § 5(B):

... The Supreme Court has exclusive original jurisdiction of disciplinary proceedings against a member of the bar.

STATEMENT OF FACTS

The Louisiana State Bar Association, appearing through the Committee on Professional Responsibility, brings this action against petitioner, Johnnie A. Jones, a practicing attorney, seeking his suspension from the practice of law for professional misconduct.

Hearings were conducted on May 23, 1977 and on October 4, 1977 by the Committee. Petitioner appeared in his own

behalf. Based upon its investigation and the evidence obtained the Committee on Professional Responsibility concluded that petitioner had been guilty of professional misconduct "as to evidence a lack of fitness for the practice of law."

On March 14, 1978 the Louisiana State Bar Association instituted disciplinary proceedings. Louisiana Supreme Court appointed a Commissioner to take evidence and to report his findings of fact and conclusions of law. The Commissioner conducted a hearing on August 1, 1978 at which petitioner appeared and again represented himself.

As a result of the hearing the Commissioner found that on August 25, 1969 petitioner was engaged by one William Adams to represent him in the prosecution of a workmen's compensation claim. After trial and appeal judgment was rendered in Adam's favor for \$19,492.22. The judgment was paid by the insurer, St. Paul Fire and Marine Insurance Company, in two drafts: the first dated February 13, 1973 for \$10,198.70 and the second dated November 7, 1973 for \$9,293.52.

According to a receipt dated February 16, 1973, signed by Adams, petitioner deducted \$4,455.44 from the first draft as reimbursement for cash advances made by him pending the litigation. Another \$2,500 was shown on the receipt as a deduction for attorney's fees, and \$3,253.26 was shown as having been remitted to Adams. Contrary to this receipt, the record shows that petitioner issued his check for \$1,000, dated February 16, 1973, to Adams and retained \$2,253.26 in his "business account" at the bank. As of November 1973, \$917.86 of the money due to Adams from the February 13, 1973 draft had not been delivered to him. Of this amount, \$400 was remitted to Adams on November 27, 1973 and the remaining \$517.96 was remitted on January 10, 1974.

During this time the balance in petitioner's account at the bank was \$658.94 on February 28, 1973, \$4.65 on March

8, 1973 and the account was overdrawn by \$5.69 on April 5, 1973. In this same period petitioner had a separate trust account in another local bank with a constant balance of \$240.36.

When the second draft for \$9,293.52 was received on November 7, 1973, petitioner deposited \$4,000 in this trust account. That account was debited for \$1,097.55 on December 12, 1973, leaving a balance of \$3,130.95 and the account remained under \$4,000 until January 11, 1974. On January 10, 1974 Adams received a check for \$4,517.86 drawn on petitioner's trust account. The amount represented a final accounting of the proceeds from both drafts. The Commissioner found [a strong inference] from these facts that a portion of the proceeds of the second draft were commingled.

In June 1970 the Bar Association was contacted by an attorney acting for four individuals who had retained petitioner to assert their claims for personal injuries sustained in a September 5, 1963 automobile accident. It was reported that the claims had been settled in March 1968 for \$3,570 and claimants had not been paid.

The Commissioner concluded that there were instances of misconduct relating to improper handling of petitioner's client's funds. Moreover, the Commissioner found that petitioner at the October 4, 1977 hearing admitted to [commingling] when he testified:

"In the words, the way you are using 'commingling' my answer to that is yes, because I've done all that kind of commingling; . . ." "I don't see how I can function without having some type of commingling . . ." In brief addressed to this Court respondent submits that "if these factual situations as presented constitute intentional noncompliance with the canons by respondent, then in such event respondent has violated the canons.

Louisiana Supreme Court, in upholding the Commissioner's findings, maintains that the record reflects petitioner has had a pattern of commingling client's funds over a period of years and has been cautioned against this practice; that petitioner has admitted this and testified that he will continue this practice; that petitioner has violated the Code of Professional Responsibility and disciplinary action is necessary.

Louisiana Supreme Court suspended petitioner, Johnnie A. Jones, from the practice of law for a period of six (6) months.

REASONS FOR GRANTING THE WRIT

1. The decision of the Supreme Court of Louisiana directly conflicts with the due process principles enunciated in previous decisions of this Court, e.g., viz:

Disbarment proceedings are of a quasi-criminal nature; the charge must be known before the proceedings commence and they become a trap when, after they are underway, charges are amended on basis of testimony of accused who can then be given no opportunity to expunge earlier statements and start afresh. *In re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, at 1223 (1968).

These are adversary proceedings of a quasi-criminal nature. Cf. *In re Gault*, 387 U.S. 1, 33, 87 S.Ct. 1428, 1446, 18 L.Ed.2d 527. The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh. *Id.* (88 S.Ct., at 1226).

2. The decision of the Supreme Court of Louisiana runs afoul of the peaceful assemblage clause of the First Amend-

ment and denies petitioner equal protection of the laws guaranteed to him by the Fourteenth Amendment, e.g., viz:

State may not, by invoking power to regulate professional conduct of attorneys, infringe in any way right of individuals and public to be fairly represented in lawsuits authorized by Congress to effectuate basic public interest. *Brotherhood of R. R. Trainmen v. Virginia ex rel. Va. State Bar*, 377 U.S. 1, 84 S.Ct. 1113, 12 L.Ed.2d 89, 11 A.L.R.3d 1196, rehearing denied 377 U.S. 960, 84 S.Ct. 1625, 12 L.Ed.2d 505, on remand 149 S.E.2d 265, 207 Va. 182 (1964).

Right to earn a livelihood by following one's legitimate occupation is a right implicit in this clause. *Corey v. City of Dallas*, (D.C. TEX, 1972), 352 F.Supp. 977.

This amendment protects right of individual to pursue chosen profession without interference by arbitrary state action and state may not exclude individual from any profession in a manner or for reasons contravening this clause. *Purifoy v. State Bd. of Ed.*, Cal.App. 1973, 106 Cal.Rptr. 201.

Freedom of speech, assembly, and petition guaranteed by this amendment and Amend. 14 gave union right to hire attorney on a salary basis to assist its members in assertion of their legal rights with respect to processing of workmen's compensation claims. *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, Ill. 1967, 389 U.S. 217, 88 S.Ct. 353, 19 L.Ed.2d 426.

Decree of Supreme Court of Appeals of Virginia declaring that Virginia statute proscribing any arrangement by which prospective litigants are advised to seek assistance of particular attorneys was applicable to NAACP would be invalid if it prohibited privileged exercises of rights under this

amendment whether or not record disclosed that NAACP engaged in privileged conduct, for in appraising statute's inhibitory effect on such rights United States Supreme Court will not hesitate to take into account possible applications of statute in other factual contexts besides that in suit by NAACP. *National Ass'n for Advancement of Colored People v. Button*, Va. 1963, 371 U.S. 415, 9 L.Ed.2d 405.

3. Article XV, Sections 3 and 4, of the Articles of Incorporation of the Louisiana State Bar Association is unconstitutional insofar as there is provided no [Liberative Prescription] by which time civil judicial prosecution shall commence from the date of the act of commission of any alleged-obstensible breach of the [D]isciplinary [R]ules; that, therefore, petitioner is denied statutory due process notice and equal protection of the laws guaranteed to him by the Fourteenth Amendment of the United States of America and Article I, §§ 2 and 3 of the Constitution of the State of Louisiana, notwithstanding the rationale of the Supreme Court of Louisiana in the case of *State v. Fourchy*, 106 La. 743, 31 So. 325 (1901) maintaining that:

The obligation is the breach of a special obligation, contractual in its nature, in consideration of which petitioner was granted the license which is now proposed, by reason of such violation, to withdraw. The obligation which the defendant has violated, if the charges against him be true, is that whereby he undertook to conduct himself honestly as an attorney, and to maintain the good character upon the faith of which he was admitted to the bar, and the only prescription applicable to the action growing out of such violation seems to be that of 10 years.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Louisiana.

Respectfully submitted,

Petitioner in Proper Person:

JOHNNIE A. JONES

The JoAnSEAD Building
1261-65 Government Street
Baton Rouge, Louisiana 70802
Telephone: (504) 383-8573

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the above and foregoing "Petition for Writ of Certiorari" to the Supreme Court of the State of Louisiana has been served upon the opposing party through its counsel of record by mailing a copy of same, postage prepaid, to the Honorable Thomas O. Collins, Jr., Executive Counsel, Louisiana State Bar Association, Committee on Professional Responsibility, 225 Baronne Street, Suite 210, New Orleans, Louisiana 70112.

Baton Rouge, Louisiana, this 23 day of October, 1979.

JOHNNIE A. JONES

APPENDIX "A"

SUPREME COURT OF LOUISIANA

 NO. 61,799

LOUISIANA STATE BAR ASSOCIATION

VS.

 JOHNNIE A. JONES

DISCIPLINARY PROCEEDING

SUMMERS, Chief Justice.

The Louisiana State Bar Association, appearing through the Committee on Professional Responsibility, brings this action against respondent Johnnie A. Jones, a practicing attorney, seeking his suspension from the practice of law for professional misconduct.

Hearings were conducted on May 23, 1977 and on October 4, 1977 by the Committee. Respondent appeared in his own behalf. Based upon its investigation and the evidence obtained the Committee on Professional Responsibility concluded that respondent had been guilty of professional misconduct "as to evidence a lack of fitness for the practice of law."

On March 14, 1978 the Louisiana State Bar Association instituted disciplinary proceedings. This Court appointed a Commissioner to take evidence and to report his findings of fact and conclusions of law. The Commissioner conducted a hearing on August 1, 1978 at which respondent appeared and again represented himself.

As a result of the hearing the Commissioner found that on August 25, 1969 respondent was engaged by William Adams to represent him in the prosecution of a workmen's compensation claim. After trial and appeal judgment was rendered in Adam's favor for \$19,492.22. The judgment was paid by the insurer, St. Paul Fire & Marine Insurance Company, in two drafts: the first dated February 13, 1973 for \$10,198.70 and the second dated November 7, 1973 for \$9,293.52.

According to a receipt dated February 16, 1973, signed by Adams, respondent deducted \$4,455.44 from the first draft as reimbursement for cash advances made by him pending the litigation. Another \$2,500 was shown on the receipt as a deduction for attorney's fees, and \$3,253.26 was shown as having been remitted to Adams. Contrary to this receipt, the record shows that respondent issued his check for \$1,000, dated February 16, 1973, to Adams and retained \$2,253.26 in his "business account" at the bank. As of November 1973, \$917.86 of the money due to Adams from the February 13, 1973 draft had not been delivered to him. Of this amount, \$400 was remitted to Adams on November 27, 1973 and the remaining \$517.86 was remitted on January 10, 1974.

During this time the balance in respondent's account at the bank was \$658.94 on February 28, 1973, \$4.65 on March 8, 1973 and the account was overdrawn by \$5.69 on April 5, 1973. In this same period respondent had a separate trust account in another local bank with a constant balance of \$240.36. Obviously respondent had either commingled or used Adam's money.

When the second draft for \$9,293.52 was received on November 7, 1973, respondent deposited \$4,000 in this trust account. That account was debited for \$1,097.55 on December 12, 1973, leaving a balance of \$3,130.95 and the account remained under \$4,000 until January 11, 1974. On January

10, 1974 Adams received a check for \$4,517.86 drawn on respondent's trust account. The amount represented a final accounting of the proceeds from both drafts. The Commissioner found a strong inference from these facts that a portion of the proceeds of the second draft were commingled.

In June 1970 the Bar Association was contacted by an attorney acting for four individuals who had retained respondent to assert their claims for personal injuries sustained in a September 5, 1963 automobile accident. It was reported that the claims had been settled in March 1968 for \$3,570 and claimants had not been paid. It was not until August 1970, after involvement of the Committee of the Bar Association that claimants received their money.

The Commissioner concluded that there were instances of misconduct relating to improper handling of respondent's client's funds. Moreover, the Commissioner found that "(o)verriding the cited instances of commingling is the respondent's admission that he has as a matter of practice commingled clients' funds in the past that he will continue to do so because it is the only way he can stay in business."

Canon 9 of the Code of Professional Responsibility charges an attorney with the responsibility of maintaining his client's funds separate from his own in an identifiable bank account and to promptly pay or deliver to the client as requested by the client all the funds the client is entitled to receive. Under Disciplinary Rule 9102 the following guidelines for handling the funds of clients are provided:

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive."

At the October 4, 1977 hearing respondent testified: "In the words, the way you are using 'commingling' my answer to that is yes, because I've done all that kind of commingling; . . ." "I don't see how I can function without having some type of commingling . . ." In brief addressed to this Court respondent submits that "if these factual situations as presented constitute intentional noncompliance with the canons

by respondent, then in such event respondent has violated the canons."

It is the duty of an attorney to uphold the integrity of the bar and to avoid even the appearance of impropriety. Louisiana State Bar Association v. Weysham, 307 So. 2d 336 (1975). It is well-settled that since the primary objective of disciplinary proceedings is to protect the courts and the public, no greater penalty than that which would accomplish this purpose should be imposed. Louisiana State Bar Association v. Jacques, 257 So. 2d 413 (1972); Louisiana State Bar Association v. Cox, 215 So. 2d 513 (1968).

The record reflects respondent has had a pattern of commingling clients' funds over a period of years and has been cautioned against this practice. He has admitted this and testified that he will continue this practice. A violation of the Code of Professional Responsibility occurred and disciplinary action is necessary.

For the reasons assigned it is ordered, adjudged and decreed that Johnnie A. Jones be suspended from the practice of law for a period of six months.

APPENDIX "B"

IN THE SUPREME COURT OF LOUISIANA

NUMBER: 61,799

LOUISIANA STATE BAR ASSOCIATION
Petitioner

VERSUS

JOHNNIE A. JONES
Respondent-Applicant

FILED:

CLERK

APPLICATION FOR REHEARING

The application of JOHNNIE A. JONES, the respondent-applicant in the above entitled and numbered cause, respectfully represent, that the [J]udgment of this Honorable Court rendered herein on Monday, June 25, 1979, a copy of which having been received by respondent-applicant on Tuesday, June 26, 1979, decreeing that JOHNNIE A. JONES, the respondent-applicant, be suspended from the practice of law for a period of six (6) months, is erroneous and contrary to the law and evidence and is prejudicial to respondent-applicant, JOHNNIE A. JONES (hereinafter simply referred to as "RESPONDENT"), for the following reasons:

—1—

The said [J]udgment of this Honorable Court, rendered pursuant to the Original Jurisdiction of this Court under the

provisions of Louisiana Constitution (1974) Article V, Section 5(B), is contrary to the law and evidence and prejudicial to respondent in that it denies respondent equal protection of the laws as guaranteed to him by the Fourteenth Amendment of the Constitution of the United States of America and Article I, Section 3, of the Constitution of the State of Louisiana insofar as said [J]udgment holds and maintains that the Articles of Incorporation of the Louisiana State Bar Association, Article XVI (Code of Professional Responsibility), Cannon 9 (Ethical Considerations), or Disciplinary Rules (DR) 9-102, all of LSA Volume 21A, Chapter 4—Appendix, Title 37 (immediately following LSA-R.S. 37:218) is a prohibition against respondent, as an attorney, having commingled his client's fund with his client's knowledge and consent, at the request of his client and for the benefit of his client. [I.e., in holding and maintaining that the provisions of DR 9-102 presuppose a trust reposed in respondent, as an attorney, which gravitates so strongly in favor of the public interest and good moral conduct that such provisions cannot [could not] be waived or altered with the knowledge and consent of client and at the request of the client and for the benefit of client.]

—2—

The said [J]udgment of this Court is contrary to the law and evidence and denies respondent equal protection of the laws as accorded him by the Fourteenth Amendment to the Constitution of the United States of America and Article I, Section 3, of the Constitution of the State of Louisiana insofar as it fails to take judicial cognizance of that portion of the testimony of the complaining witness, William Adams, who testified on May 23, 1977, at page 15, line 24 through page 16 line 2 of the [T]ranscript of the Formal Investigatory Hearing by Louisiana State Bar Association Committee on Professional Responsibility, as follows:

A. That's how much he had held for me, because he asked me, to be correct, could I let him have \$2,000; and I agreed to it, . . .

which, in essence, acknowledges receipt of payment in full settlement of the first [D]raft in the amount of \$10,198.70 under the attorney-client relationship which existed between respondent and the said complaining witness and created and established nothing more than a personal loan by the complaining witness to the respondent that is not within the ambit of Article XV [Discipline and Disbarment of Members] of the Articles of Incorporation of the Louisiana State Bar Association, or DR 9-102, except same be unconstitutional inasmuch as it denies respondent due process of law and equal protection of the laws accorded to him by the Fourteenth Amendment to the Constitution of the United States of America and Article I, Sections 2 and 3, of the Constitution of the State of Louisiana in that by virtue of respondent being an attorney he is restrained by the "Disciplinary Rules" of the Bar Association from engaging in private business matter [common in the course of events] with a client such as that indicative of the aforerecited testimony of the complaining witness, William Adams, except to subject himself to the "Disciplinary Rules" of the Bar Association and be disciplined for commingling of client's funds, as in the case made and provided, or be disciplined for, purportedly, having given the appearance of impropriety.

—3—

Insofar as the provisions of DR 9-102 prohibit respondent, merely by virtue of respondent being an attorney pursuing a livelihood as a licensed practicing attorney, from engaging in extemporaneous negotiations with his client, William Adams, the complaining witness, during the existence of an attorney-client relationship, or immediately subsequent there-

to, is an unconstitutional discrimination that infringes upon respondent's constitutionally protected freedom of association accorded to him [respondent] by the First Amendment of the Constitution of the United States of America and Article I, Section 9, [peaceful assemblage] of the Constitution of the State of Louisiana.

—4—

Article XV, Sections 3 and 4, of the Articles of Incorporation of the Louisiana State Bar Association is unconstitutional insofar as there is provided no "Liberative Prescription" by which time civil-judicial prosecution shall commence from the date of the act of commission of any alleged-ostensible breach of the "Disciplinary Rules" and, therefore, under said provisions, respondent has been and is denied due process of the law and equal protection of the laws as accorded to him by the Fourteenth Amendment to the Constitution of the United States of America and Article I, Sections 2 and 3, of the Constitution of the State of Louisiana.

—5—

Pursuant to Rule IX, Section 3, of the Rules of the Supreme Court of Louisiana, respondent-applicant, JOHNNIE A. JONES, request additional time for filing of brief in support of this, his "Application for Rehearing."

—6—

Pursuant to Rule IX, Section 1, of the Rules of the Supreme Court of Louisiana, respondent-applicant, JOHNNIE A. JONES, shows that a copy of this, his "Application for Rehearing" has been served upon opposing counsel of record by regular United States Mail, properly addressed and postage prepaid.

WHEREFORE, respondent-applicant, JOHNNIE A. JONES, prays that a rehearing be granted in this cause and that after due proceedings had the [J]udgment rendered herein, by this Honorable Court, on Monday, the 25 day of June, 1979, and a copy of which having been received by respondent-applicant on Tuesday, the 26 day of June, 1979, be set aside and reversed and that there be judgment herein dismissing the petition of LOUISIANA STATE BAR ASSOCIATION, the petitioner herein.

And for all other necessary orders, general and equitable relief in the premises.

Respectfully submitted,

Respondent-Applicant in Proper Person:

/s/JOHNNIE A. JONES

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1261-65 Government Street
Baton Rouge, Louisiana 70802
Telephone: 504/383-8573

VERIFICATION

BEFORE ME, the undersigned authority, personally came and appeared:

____JOHNNIE A. JONES____

the respondent-applicant in proper person, who, being first duly sworn, did depose and say:

That he served a copy of the above and foregoing "Application for Rehearing" upon opposing counsel of record by regular United States Mail, postage prepaid, addressed, viz: Honorable Thomas O. Collins, Jr., Executive Counsel, Louisiana State Bar Association, Committee on Professional Responsibility, 225 Baronne Street, Suite 210, New Orleans, Louisiana 70112.

Baton Rouge, Louisiana, this 6 day of July 1979.

/s/JOHNNIE A. JONES

SWORN TO and SUBSCRIBED, before me this 6 day of July, 1979, at Baton Rouge, Louisiana.

/s/ROBERT C. WILLIAMS
Notary Public

APPENDIX "C"

Date: July 27, 1979

SUPREME COURT OF LOUISIANA

NO. 61,799

Louisiana State Bar Association

Versus

Johnnie A. Jones

On Application For Rehearing

Denied.

FWS

AT JR

JAD

PFC

WFM

JLD

Blanche, J. recused.

**SUPREME COURT OF LOUISIANA
A TRUE COPY**

/s/Frans J. Labranche, Jr.

**Frans J. Labranche, Jr.,
Clerk of Court**